IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 3012 of 2007()

CC.428/2002 PENDING AS L.P.NO.162/06 OF THE MUNSIFF-MAGISTRATE COURT, PARAVOOR, KOLLAM.

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PETITIONER: 1ST ACCUSED

SANTHOSH, AGED 38, S/O. RAGHAVAN PILLAI,
"KIZHAKKETHOTTAM", EARAM, MEENAD VILLAGE,
CHATHANNOOR, KOLLAM DISTRICT.

BY ADV. SRI.C.UNNIKRISHNAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
PARAVOOR, KOLLAM DISTRICT.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3012 of 2007

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Dated this the 28th day of September, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 323 r/w. 34 I.P.C. All offences are bailable, submits the learned counsel. Cognizance has been taken initially as C.C.506 of 1998. As the petitioner and another accused were not available for trial, the case against them was split up. Consequent to non-appearance of the petitioner it was later transferred to the list of long pending cases. Two of the co-accused have already been found not guilty and acquitted. Coercive processes have been issued against the petitioner. The petitioner apprehends imminent arrest.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He is willing to surrender before the learned Magistrate and seek bail. He shall co-operate with the Court for the expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate

on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on

merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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